

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re A.F., a Person Coming Under the
Juvenile Court Law.

B208290

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK31986)

Plaintiff and Respondent,

v.

T.A., et al.,

Defendants and Appellants.

APPEALS from an order of the Superior Court of Los Angeles County.

D. Zeke Zeidler, Judge. Reversed and remanded with directions.

Jesse F. Rodriguez for Defendant and Appellant T.A.

Leslie A. Barry for Defendant and Appellant J.F.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant
County Counsel, and Bryon G. Shibata, Associate County Counsel, for Plaintiff and
Respondent.

T.A. and J.F., the mother and father of minor A.F., appeal from the order terminating their parental rights after a Welfare and Institutions Code section¹ 366.26 hearing. Appellants contend² that substantial evidence did not support the order because mother met the continuing beneficial relationship exception contained in section 366.26, subdivision (c)(1)(B)(i)³ and that the court erroneously terminated their parental rights because proper notice under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) had not been perfected. Although mother did not meet the continuing beneficial relationship exception, we reverse and remand with directions solely to ensure compliance with ICWA.

FACTUAL AND PROCEDURAL SYNOPSIS

I. Detention

On May 29, 2006, A. was detained in connection with the arrest of mother for illegal possession of the drug Vicodin. The Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition. As amended, the petition alleged mother endangered and put A. at risk in situations such as her possessing illicit drugs while A. was in her care and control and by being arrested with possession of Vicodin; father had a criminal history, was currently serving a five-year prison sentence, and his criminal history endangered the child; and mother's failure to reunify with A.'s sibling endangered A. and put him at risk.

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

² Father simply joins in mother's brief and raises no separate issues as to himself. (See *In re DeJohn B.* (2000) 84 Cal.App.4th 100, 110.)

³ Formerly subdivision (c)(1)(A). Some of the cases cited herein refer to the former designation for this exception.

At the hearing, neither parent was present as both were incarcerated. The court found a prima facie case and detained A. in shelter care. The court ordered family reunification services for the parents. At the continued hearing the next day, mother appeared and requested A. be placed with his paternal great aunt until mother was released from incarceration. The court ordered an evaluation of the great aunt's home, and, if it was appropriate, A. was to be detained there.

II. Jurisdiction/Disposition

In July, the Department reported A. remained in foster care and mother was still incarcerated. Mother said her recent arrest occurred after she was pulled over by police for expired car tags. A. was in the car at the time. Police searched the car and found about 100 Vicodin pills in a Ziplock bag; mother claimed the drugs had been prescribed, but she could not provide information about her physician. Officers also found two glass pipes of the type used for ingestion of methamphetamine. Mother was arrested for possession of a controlled substance for sale.

From 1992 until 1998, mother was married to S. A. In 1992, mother gave birth to a son, who was currently living with his father S. in Orange County. In 1997, mother gave birth to C., another son. In 1997, the Department received a referral regarding newborn C.'s exposure to amphetamine and cannabis in connection with mother's use. Mother did not know the identity of C.'s father, and C. was eventually adopted by another family. From 2000 to 2001, mother was married to James N., but they had no children. A. was born in 2001.

Mother admitted she had been sentenced in 1999 to three years probation for possession of methamphetamine for sale and to using methamphetamine for six months prior to her 1999 arrest; mother claims that period was the only period in which she used any kind of illicit drugs. Mother expressed remorse for the impact her actions had on A. and indicated she would comply with all court orders and her case plan in order to reunify with A.

Father was serving a five-year prison sentence for assault with a firearm and had multiple convictions, including possession of a controlled substance, infliction of injury to a spouse/cohabitant, violation of parole, and driving with a suspended license. Mother said father had little contact with A. until A. was four years old. In the months prior to father's arrest, A. was spending nights with father.

At the July hearing, the court ordered A. detained with his paternal great aunt and uncle and ordered at least weekly visits for the parents while they were incarcerated within a reasonable distance.

At the August adjudication hearing, the court ordered mother's visits to be twice a week if she was released from custody and, if not released, visits were to be once a week if mother's place of incarceration was a reasonable distance from A.'s placement.

A supplemental report stated mother had been convicted of possession of controlled substances and sentenced to 16 months in prison; mother was scheduled to be transferred to a facility in Chowchilla the following month. A. visited mother at her prison in August, and another visit was scheduled for the first week in September.

At the continued adjudication hearing, the court found father was A.'s presumed father. The court sustained the petition as amended under subdivisions (b) and (j) of section 300 and found returning A. to the parents would put him at risk. The court then proceeded to disposition, declared A. a dependent, and ordered him placed with his paternal great aunt and uncle. The court ordered family reunification services for mother, but denied services for father pursuant to section 361.5, subdivision (e)(1). The court ordered mother attend and complete a program of drug rehabilitation, random drug testing, parenting education and individual counseling to address case issues. The court ordered monitored visits for both parents if incarcerated within a reasonable commuting distance. If mother's place of incarceration proved to be beyond a reasonable commuting distance from A., the Department was ordered to arrange at least weekly telephone calls.

III. Review Hearings

A. Six Month Review

In February 2007, the Department reported mother remained incarcerated at Chowchilla, but she was scheduled to be released later that month. A CSW consulted with mother and informed mother she needed to comply with court-ordered services as soon as possible. At the hearing, the court found mother was not in compliance with the case plan, but also that the Department had not made reasonable efforts to assist mother in reunifying with A. It was reported A. was “occasionally” having visits with mother.

In May, the paternal great aunt told the Department that due to changes in her health, she would be unable to continue caring for A. In July, A. was placed with foster parents, who eventually became the prospective adoptive parents.⁴ The foster parents observed A. was generally adjusting well to the new placement, but he had anger problems.

The CSW had a face-to-face appointment scheduled with mother, but mother neither showed nor called to cancel. The CSW left a voicemail message for mother to reschedule, and mother called back and did so; when they met on July 11, the CSW provided mother with referrals for individual counseling and parenting classes. Mother said she did not believe those services were an important part of the case plan. The CSW told mother that every court order was important and she needed to enroll in counseling and parent education. The CSW emphasized that failure to comply with the case plan might result in A.’s adoption.

At the same meeting, the CSW told mother her visits were scheduled for Fridays; mother said she would be unable to attend the July 13 visit due to her vacation. The next day, mother called the CSW and said she had changed her mind and was willing to postpone her vacation to visit A. However, the foster parents had scheduled a

⁴ For a time, father’s ex wife, who was the mother of A.’s two half-siblings, was put forward as a second prospective adoptive parent.

medical/dental exam that day after mother had cancelled. The visit was scheduled for the following week.

The foster mother called the CSW and said mother had upset A. on his birthday by repeatedly calling and hanging up on him.

The July 20 visit took place without incident. Mother and A. played with toys and colored the pictures and stickers that mother gave A. as a birthday gift.

B. Twelve Month Review

In August, the Department reported mother had been released from prison and was working in construction.⁵ The Department reported A. was adoptable and mother was complying with drug counseling. Mother had randomly drug tested from April to early July, with five negative tests and two positive tests for amphetamine and methamphetamine. Mother had still not attended any individual counseling or parent education classes.

In September, the Department reported mother was looking for employment and was compliant with parenting classes and drug counseling but had not enrolled in individual counseling. Random drug testing from April to mid-August revealed one no-show and three positive tests.

Mother visited A. on a weekly basis and maintained regular telephone contact with the CSW. The paternal great aunt wrote a letter stating that since mother's release on February 25, mother began telephoning and visiting A. at the aunt's home, eventually visiting "every day (except on meeting nights)."

⁵ The report indicates mother was out of prison no later than August 1. Previously, mother said her scheduled release date was February 25, and the paternal great aunt stated in a letter that mother had been released on that date. The CSW was unable to confirm the actual release date with mother's detention facility.

At a meeting on September 10, mother asked why the CSW was recommending termination of parental rights, and the CSW (who was recommending termination of services) replied mother had tested positive on her last drug test and had not yet completed her parent education or counseling. Mother became upset and denied any recent drug use.

In early October, A.'s therapist told the CSW that A. was having nightmares about father and beginning to discuss issues regarding father's past abuse. A. told the therapist and the foster parents that he never wanted to see father again and expressed anger and fear of father. A. also had "feeling of sadness [] associated with [mother]."

Around the same time, the foster mother told the CSW that mother had called A. the previous night and told him they would be reunited "very soon." Thereafter, A. became adamant he would reunite with mother and became angry with the foster mother when she said the court had not made a final decision. A. told the foster parents he was sad because he did not think mother would be able to become a good mother and reunite with him. In the past, A. had asked the foster mother if mother could move into the foster parents' home and live with him there.

In October, the Department reported A. was adjusting and feeling more comfortable with his new home. A. made new friends at summer day camp, on his soccer team, and at his school. A. expressed his preference to live with mother or, in the alternative, in his current placement. A. still did not want to return to father because of father's past abuse.⁶ A.'s therapist stated he was benefitting from his weekly therapy, which was reducing his symptoms of post-traumatic stress disorder. A. was also benefitting from the stability of his placement with the foster parents, who were complying with the family reunification plan.

⁶ In November 2007, A. told his foster mother that mother had engaged in inappropriate sexual contact with him. Mother denied the allegations. There was no follow up to those allegations. A.'s therapist stated A. had never disclosed anything of this nature in therapy.

On the October 15 visit, mother showed up with alcohol on her breath. The CSW told mother her visit would end early and she would need to alcohol test on demand; mother walked away from the CSW. That day's visit did not go well; mother was in a sad mood and did not interact well with A. At the end of the visit, mother engaged in a prolonged goodbye that made A. upset and tearful.

The foster mother reported A. became nervous after mother told him over the phone that father would be released from prison and he should have a "smiley face" for father upon his release. On October 22, A. became upset during a telephone call with mother after she missed her earlier scheduled time for the call. A. later had a bad dream about the call.

At the hearing, the court ordered family reunification services and parental visitation with Department discretion to liberalize the visits.

C. Eighteen Month Review

For the November hearing, the Department reported A. remained appropriately placed with his foster parents, who were providing him with all the basic necessities and medical care. In a letter to the court, the foster parents indicated A. had benefitted from the structure they were providing in the form of reduced television watching, organized sports activities, regular family dinner times, participation in family chores and regular attention to his homework. A.'s new ability to verbalize and communicate past painful experiences resulted in a marked decrease in his tantrums. A.'s therapist observed he felt more comfortable in therapy when accompanied by his foster parents than when he was alone. When the foster parents were out of town for three days on business, A. was in temporary care; his behavior regressed and he expressed an intense fear of not seeing them again. A. referred to the foster parents as mom and dad and to their teenaged son as his brother. A. had expressed anger towards mother for "all the drugs and stuff." A. continued to fear father and expressed a desire not to be reunited with him. Mother continued to be in a relationship with father.

A. told the CSW that in the future, he wanted to live in his foster home, but then stated ““with my mom and then here.”” A. had begun to acknowledge he might not reunify with mother, and had begun to express a desire to remain in his current home. The foster parents indicated they were willing to keep in contact with mother, and noted that although A. told them he wanted to remain with them, “he wants to see his mom too and we will never deny that.”

Mother was maintaining regular telephone contact and weekly visits with A., was compliant with her parent education classes and had completed her drug counseling, but still had not enrolled in individual therapy. Mother’s drug tests through late October showed three no-shows and four positive tests. All the positive tests, including the recent October 29 test, detected amphetamine and methamphetamine.

The adoption social worker stated that after a sibling visit, A. expressed concern that if he went to the siblings’ home again, he might not be permitted to return to the foster parents.

During a November 6 telephone call, the CSW told mother her latest drug test came back positive; mother said she believed an inhaler caused the positive test.

In its report for the January 2008 contested section 366.22 hearing, the Department stated A. remained placed with his foster parents and father remained incarcerated. A. wanted to remain with his foster parents, and the foster parents reiterated their commitment to adopting A. Mother said she had begun individual counseling, but she did not provide a progress report as requested by the CSW. Mother’s drug tests through January showed three no-shows and six positive tests.

In a letter, A.’s therapist stated she continued to treat him on a weekly basis and he continued to generally make good progress and was articulate about his feelings, fears and concerns, noting A. “is able to verbalize where he feels safest and I have observed that his foster parents are able to support him therapeutically. He appears to feel safe, secure and stable in his current home and has difficulty with being away from his foster parents for too many hours. It is apparent that he has formed a strong, healthy attachment

to his foster parents.” The therapist concluded A. would benefit from remaining in his stable home where he felt safest and was thriving.

The services log attached to the report indicated mother visited A. 16 times from August through mid-November 2007; generally, they played together with a variety of games and arts and crafts, ate snacks together, or engaged in conversation. Mother was well prepared for the visits by bringing lots of materials to engage A.; she also complimented him constantly. A. maintained close contact with mother by sitting next to her or on her lap and kissing and hugging her. On occasion, mother appropriately disciplined A. A. expressed sadness or a desire to stay with mother at the end of some of the visits.

After the hearing, the court found mother to be only in partial compliance with the case plan and ordered termination of her family reunification services.

IV. Section 366.26 Proceedings

In May 2008, the Department reported A. remained appropriately placed. A. showed anxiety and difficulty in coping with transitions of activities, places and people. A.’s therapist stated that in order to fully resolve his emotional issues, A. should be given a stable and consistent parenting style.

A. was performing well in kindergarten, developing friendships, and participating in after-school activities such as soccer and t-ball. The foster parents continued to provide A. with the basic life necessities and medical care. A. called the foster parents “mom” and “dad” and sought comfort, instruction, permission and guidance from them. They continued to be committed to adopting A., but also encouraged A. to continue contact with his extended biological family. No legal impediments to the foster parents’ adoption were identified, and the home study indicated no problems with the prospective placement.

Father remained incarcerated and still had no contact with A. Mother continued to have weekly monitored two-hour visits.

For the contested hearing, father submitted a packet of letters indicating he did not want A. adopted along with letters verifying his good performance in a fire fighter program as well as handwritten notes from A. to father. The court continued the hearing until May 23.

On May 23, mother filed a section 388 petition requesting a home-of-mother order, reinstatement of family reunification services, and unmonitored visits or overnight and extended visits. Mother submitted a letter from her counselor stating mother had consistently attended counseling sessions since November 2007. The court denied the petition finding it did not state sufficient new evidence or change of circumstances or show a change would be in A.'s best interest and noted mother had not even had unmonitored visits and there was no legal basis to reinstate family reunification services. The court also noted the therapist's letter was vague and did not address alleviation of risk or contain recommendations. The court proceeded to the section 366.26 hearing.

At the section 366.26 hearing, mother testified she visited A. once a week for two hours and would bring "a bag full of toys," and play games, watch DVDs, and sometimes cook for A. or bring him fast food. Mother testified A. would hug, smile and run up to her at the beginning of the visits and was sad when the visits ended. Mother consistently telephoned A. three times a week, and they would talk for about 10-15 minutes. Mother noted that lately A. did not feel like talking. Mother opined that her relationship with A. had not changed since his detention, but also admitted her relationship with A. was "distant but he still knows I am his mother." Mother stated she was opposed to adoption and was on a waiting list for a sober living home where A. could live with her.

The parents opposed termination of parental rights. A. and the Department requested termination of parental rights. The court stated that to find A. was not adoptable, it would have had to find regular contact and consistent visitation that constituted a parental relationship that outweighed the benefit of adoption. The court found A. was adoptable and returning him to the parents would be detrimental. The court ordered parental rights be terminated and ordered adoption as the permanent plan.

Mother and father filed timely notices of appeal.

DISCUSSION

I. Termination of Parental Rights

Appellants contend substantial evidence does not support the court's order terminating their parental rights as mother met the exception to termination under section 366.26, subdivision (c)(1)(B)(i). This court reviews the finding an exception does not apply for substantial evidence. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

A parent must show "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated. [¶] Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. The relationship arises from day-to-day interaction, companionship and shared experiences. The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (Citation omitted.) (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

Even though day-to-day contact is not mandated (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51), more than frequent and loving contact is required. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.)

Citing *Autumn H.* and other cases, mother asserts she met the exception because she had occupied a parental role with A. for five years prior to his being removed, she had maintained a relationship as reflected by their close affection towards one another, her parental behavior and A.'s desire to return to her that outweighed the benefit of an adoptive home, and there was evidence A.'s separation from mother had been emotionally detrimental to him.

In the case at bar, mother consistently visited A. after her release from prison. There was some confusion in the record as to when she had been released from prison. A letter from the great aunt (with whom A. had been initially placed) stated mother had been visiting at the aunt's house since mother's release on February 25, 2007, and eventually visited every day. Those visits would appear to be unauthorized as they were not monitored as ordered by the court in August 2006. Mother had been visiting A. at a Department office once a week for two hours since August 2007. For the most part, mother's behavior during the visits appears to have been appropriate, she was affectionate with A., played with him, tried to educate him, encouraged and disciplined him and fed him.

However, mother's interactions with A. were not without problems. In July, on A.'s birthday, mother upset A. by repeatedly calling and hanging up on him. At the October 15, 2007, visit, mother had alcohol on her breath; when the CSW informed mother she would have to alcohol test on demand, rather than cooperating, mother walked away from the CSW. Mother was in a sad mood and did not interact well with A. during that visit and engaged in a prolonged goodbye that made A. cry and become upset. Also in October, when mother missed her regularly scheduled time for their telephone call, her subsequent call upset A. to the point he had a bad dream that evening. During another telephone call that month, A., who feared father because of father's past abuse,

became nervous after mother told him father would be released from prison and he should have a “smiley face” for father upon his release.

Moreover, although mother visited consistently, the visits were limited. In October 2007, the court gave the Department discretion to liberalize visits, but, as noted by the court, mother had not progressed to unmonitored visits, much less extended overnight or weekend visits. It was not until the last minute, the day the section 366.26 hearing was set, that mother filed a section 388 petition requesting custody or extended visits. (Compare *In re S.B.* (2008) 164 Cal.App.4th 289, 298-301 [where the father had fully complied with the case and there was expert testimony of potential harm to the child should her relationship with her father be terminated]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689-691 [testimony from the psychologist who conducted a bonding study, therapists and the social worker supported finding that maintaining the parent-child relationship outweighed adoption].)

In terminating parental rights, the court noted that in order to find A. was not adoptable, it would have to find the benefit of the parental relationship outweighed the benefit of adoption. By finding A. was adoptable, the court found the benefit of adoption outweighed the benefit of the parental relationship.

The record also shows that even though A. initially had problems, he had adjusted to his prospective adoptive parents and was thriving in their care. In November 2007, the foster parents reported A. benefitted from the structure they were providing in the form of reduced television watching, organized sports activities, regular family dinner times, family chores and regular attention to his homework. A.’s therapist observed A. was calmer when around the foster parents and his behavior regressed when they went out of town. A. had developed a strong relationship with the foster parents and their son and called them, “mom,” “dad,” and “brother.” A. expressed feelings of sadness associated with mother and anger toward her for ““all the drugs and stuff.””

By January 2008, A.’s therapist reported A. was progressing emotionally and feared he might be removed from his foster parents. According to the therapist, A. felt safe, secure and stable in his placement, had difficulty being separated from his foster

parents for extended periods, and had formed a “strong, healthy attachment to his foster parents.” The therapist opined A. would benefit from remaining in the stable, consistent, secure home where he felt safe and was thriving.

For the section 366.26 hearing, the Department reported A. was performing well in school, developing friendships and participating in school activities, sought comfort, instruction, permission and guidance from his foster parents. The foster parents encouraged A. to continue contact with his biological family.

Mother admitted her relationship with A. was distant and lately he did not feel like talking to her.

On the other hand, mother’s failure to comply with court orders supports the court’s finding the benefit of adoption outweighed the benefit of parental contact. Despite promising to do whatever was required to regain custody of A., mother decided certain requirements were not important and did not timely enroll in parenting classes or individual counseling. Mother waited until September 2007 to enroll in parenting classes and did not start individual counseling until January 2008. The letter from mother’s counselor simply stated she had attended counseling, but was vague and provided no assessment of her progress in alleviating risk. Mother maintained a relationship with father and insisted A. was to be friendly to father upon his release from prison. A. was afraid of father because of past abuse. Finally, mother was still testing positive (from April 2007 to January 2008, mother had three no shows and six positive tests), meaning she had yet to solve the problems that lead to A.’s detention.

“To sum up, when the court has not returned an adoptable child to the parent’s custody and has terminated reunification services, adoption becomes the presumptive permanent plan and parental rights should ordinarily be terminated at the section 366.26 hearing. The parent has the burden of proving that termination would be detrimental to the child under section 366.26, subdivision (c)(1)(A). The juvenile court may reject the parent’s claim simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. The court must make a more substantial and affirmative finding if it decides to apply the

exception and preserve parental rights. It must ‘state its reasons in writing or on the record,’ and those reasons must be ‘compelling.’ (§ 366.26, subd. (c)(1).) Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (Citations omitted.) (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; see also *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 “[T]he parent must show that severing the natural parent-child relationship would deprive the child of a substantial, positive emotional attachment such that the child could be greatly harmed.” (Italics deleted.))

Though a close case, the record shows this case was not an extraordinary one and that substantial evidence supports the court’s finding the regular contact exception did not apply.

II. ICWA Notice

A. Background

At the June 2, 2006, arraignment hearing, mother informed the court she had Native American ancestry, i.e., her grandmother was “full Cherokee.” Mother did not know to which Cherokee band she was related. Mother indicated her grandmother Tara (the maternal grandmother) would have such information. Mother further indicated the maternal grandmother used the last names of either M. or D. and was born in New Iberia, Louisiana, but currently lived in Mineral Wells, Texas.

The court ordered the Department to locate the maternal grandmother and to notice all three federally-recognized Cherokee tribes and to provide documentation of its ICWA notices by the next hearing.

On July 6, the Department mailed notices to the three federally recognized Cherokee tribes, i.e, United Keetoowah Band of Cherokee Indians (United Keetoowah Band), Eastern Band of Cherokee Indians (Eastern Band), and Cherokee Nation of Oklahoma (Cherokee Nation), the Bureau of Indian Affairs, and the Secretary of the

Interior. Those notices listed father's first and last names, birth date and state of birth; maternal grandmother's first name and two last names, and birth place; and maternal grandfather's first and last names. The notices listed Mother's name as T.A., rather than by her maiden name and did not give her middle name. Mother's birthplace was incorrectly listed as California instead of Louisiana. A.'s last name was incorrectly identified as A. and his date of birth was incorrectly listed as 2003. The Cherokee nation indicated it needed further information such as relevant females' maiden names and more information on the maternal grandfather.

At the August 9 hearing, the court noted the notices were missing two items: the maternal grandmother's middle name and birth date. The court ordered the Department to mail out a new set of ICWA notices correcting those defects.

On August 22, the Department mailed a second set of notices, which included the maternal grandmother's middle name and date of birth, to the three federally-recognized Cherokee tribes, the Secretary of the Interior, and the Bureau of Indian Affairs. Those notices still referred to mother's last name as A. instead of her maiden name, did not list her middle name and incorrectly listed her birthplace as California. A.'s last name was incorrectly given as A. and his date of birth was incorrectly listed as 2003.

At the August 31 hearing, the court noted it did not have a postal service tracking form for the United Keetoowah Band as it did for the other notices. The court stated it needed at least the date of delivery for that form. At the hearing, mother stated she did not know if she was registered with any tribe and had never heard whether the maternal grandmother was registered with any tribe. The court found ICWA did not apply, but added "we need to finish the notices to give any tribe a chance to come forward."

An August 30 postal delivery confirmation receipt indicated that a notice had been received by the United Keetoowah Band, and a September 5 letter from that tribe stated that, based on the information provided, there was no evidence A. was a descendant of the tribe or eligible for enrollment in the tribe.

At the February 22, 2007, hearing, based on the return receipts and the letters from the tribes, the court found ICWA notice was complete, it had no reason to believe A. was an Indian child, and ICWA did not apply.

At the November 27 hearing, the Department asked the court to order a third set of ICWA notices as A.'s correct date of birth and last name had recently been ascertained. The court did so.

On December 6, the Department mailed the third set of notices with the corrected information to the three federally-recognized Cherokee tribes, the Bureau of Indian Affairs, and the Secretary of the Interior. The notices still listed mother's last name as A. instead of her maiden name and listed her birthplace as Louisiana without giving the city of her birth (Baton Rouge). The notices did not include mother's or A.'s middle name. The certified mail receipts for the notices to the United Keetoowah Band and the Eastern Band were sent to the same mailing address. The Department provided evidence of delivery receipts for the three tribes, mother and the Bureau of Indian Affairs. No written responses from any of the three tribes appear in the record.

At the January 15, 2008, hearing, the court noted it had photocopies of the return receipts from the three tribes and the Bureau of Indian Affairs. The court asked A.'s counsel if she objected to proceeding with the most recent ICWA notices and the information they contained; neither she nor any other counsel objected. The court noted the tribes had had ten days to respond to the last set of notices and had not done so. The court found that although A.'s great grandmother might have been of full Cherokee ancestry, it had no information that the maternal grandmother, mother or A. were registered with any Cherokee tribe and no reason to know A. was an Indian child. The court found ICWA did not apply.

B. Notice

Mother's briefs contain a detailed description of ICWA and the ICWA notices/receipts. We discern that appellants contend the third set of notices were

defective because (1) they used an incorrect mailing address for the United Keetoowah Band (they used the mailing address of the Eastern Band), and (2) the notices omitted mother's and A.'s middle names, used mother's married name rather than her maiden name and listed her birthplace as Louisiana without giving the city of her birth. The Department concedes notice to the United Keetoowah Band was improper.

The notice requirements of ICWA are mandatory, strictly construed and cannot be waived by the parties. (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.) "The notice sent to the Indian tribes must contain enough identifying information to be meaningful." (*Ibid.*)

Federal regulations provide that proper ICWA notice shall include: (1) the name of the Indian child, the child's birthdate and birthplace; (2) name of the Indian tribes in which the child is enrolled or might be eligible to be enrolled; (3) all names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birth dates; places of birth and death; tribal enrollment numbers, and/or other identifying information. (25 C.F.R 23.11(d); see also *In re Karla C.* (2003) 113 Cal.App.4th 166, 175.)

Appellants contend the third set of notices was defective because the information in the notices was not sufficient for the tribes to investigate whether A. was registered or eligible for membership. Mother's only claim to Indian ancestry was that the maternal grandmother was "full Cherokee." (See *In re Louis S.* (2004) 117 Cal.App.4th 622, 631 [the most important information to be provided is the information about the family member with the alleged Indian heritage].) Mother admitted she had no knowledge the maternal grandmother, or anyone else in her family, was registered with a federally-recognized Indian tribe. The notices included all information known to the Department about the maternal grandparents as well as information about mother and A., including correct names, addresses and dates of birth.

We agree with the Department not including mother's and A.'s middle name or the city of mother's birth and using mother's married name rather than her maiden name were not significant with respect to the purpose of the notice requirements to determine whether a child has a tribal affiliation. As the information necessary to determine A.'s eligibility related to the maternal grandmother, such information about mother or A., neither of whom was reported to be registered with a tribe, would not have assisted the tribes in their investigations. (See *In re Gerardo A.* (2004) 119 Cal.App.4th 988, 995; *In re S.M.* (2004) 118 Cal.App.4th 1108, 1116.) The notices substantially complied with ICWA's notice requirements. (See *In re Jonathan D.* (2001) 92 Cal.App.4th 105, 110.) Omissions of such irrelevant information constitutes harmless error. (See *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1414, fn. 4.)

Accordingly, the court is directed to order the Department to provide notice to the United Keetoowah Band at its correct address. The notice should include all the current information, even that determined not to be significant.

If after proper notice to the tribe is provided, A. is determined to be an Indian child, mother, A. or the tribe are entitled to petition the juvenile court to invalidate orders which violated provisions of ICWA. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 711; *In re Brooke C.* (2005) 127 Cal.App.4th 377, 384, 385-386.)

DISPOSITION

The order terminating parental rights is reversed, and the matter is remanded to the juvenile court with directions to order the Department to notice the United Keetoowah Band at its correct address with all current information and to file all required documentation with the juvenile court for the court's inspection. If, after proper notice, the tribe claims A. is an Indian child, the juvenile court shall proceed in conformity with

all the provisions of ICWA and California Rules of Court, rule 1439. If, on the other hand, the tribe does not claim A. is an Indian child, the order terminating parental rights shall be reinstated.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WOODS, Acting P.J.

We concur:

ZELON, J.

JACKSON, J.